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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF
RAM MOBILE DATA USA LIMITED PARTNERSHIP

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June 20, 1994

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SUMMARY

RMD's comments address two fundamental concerns as they relate to the rules governing 900 MHz SMR service. First, the particular rules that apply to 900 MHz SMR service must address the ability of "Phase I" 900 MHz SMR licensees to expand their systems on a protected basis to natural market boundaries without being subject to mutually exclusive applications or auctions. Unless Phase I licensees are permitted to do so, neither parity with other systems nor economic viability of the fledgling services that have developed in the 900 MHz SMR band will be achieved.

For almost eight years, 900 MHz SMR licensees have been caught in a kind of regulatory no man's land. Initial Phase I DFA licenses were issued, but "Phase II," without which Phase I licenses cover too small an area to build viable systems, has been continually delayed. There was a notice of proposed rulemaking, a further notice of proposed rulemaking, and, now, it appears in the instant parity rulemaking perhaps a second further notice of proposed rulemaking on the subject. And all the while, initial Phase I licensees have been left in limbo, permitted to build out their systems, but only on a secondary, unprotected basis and always with the uncertainty of the outcome of Phase II inhibiting their ability to expand, attract investment, or market their services.

Just prior to the advent of parity and auction legislation, the SMR industry had finally reached relative consensus on a "Modified MTA" proposal submitted in the Phase II proceeding by RMD. The RMD proposal would allow system expansion, without creating mutual exclusivity among existing licensees and would reserve substantial spectrum for new entrants. That proposal, however, was put on hold, as almost all attention focused on regulatory parity and auction legislation and regulation. As set forth in the Comments that follow, RMD's Modified MTA proposal is fully consistent with Congressional mandates set forth in the auction and parity legislation and should be implemented as soon as possible.

The second broad issue addressed by RMD is the scope of the changes in the Commission's SMR rules that are required to achieve regulatory parity. In this regard, the parity concept constitutes a fundamental shift in the underlying basis upon which private land mobile services have been regulated for several decades. The nature of the shift, in RMD's judgment, requires a revamping of the rules that have previously governed these services. Because of the interrelationship of

various rules, application, and other standards, half measures, applying some common carrier principals, but leaving other licensing procedures untouched, will not work, and, ultimately, in RMD's judgment, will lead to an incoherent regulatory scheme.

With respect to the particular changes that are required to be made to the SMR rules, RMD urges that the most fundamental one is that the method of licensing must move from individual base station licensing to wide-area market authorizations. This licensing approach is essential to allow SMR systems to respond to market demand for such services and to compete with other mobile services entities that are licensed on such a wide-area basis. Otherwise, in a common carrier regime, where each change in licensed technical parameters requires prior Commission consent, wide-area SMR systems would be adrift in an endless sea of Commission applications and paperwork, and would be helpless to respond quickly to changing market requirements.

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RAM Mobile Data USA Limited Partnership ("RMD") hereby submits the following comments with respect to the Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding. RMD's comments focus on the rule changes applicable to wide-area 900 MHz SMR licensees.

I. GENERAL PRINCIPLES: FURTHER RULE CHANGES ARE REQUIRED TO ACHIEVE REGULATORY PARITY; OTHERWISE 900 MHz SMR LICENSEES WILL SUFFER ALL OF THE BURDENS OF COMMON CARRIER REGULATION, BUT ENJOY NONE OF THE BENEFITS.

In its initial decision that implemented Sections 3(n) and 332 of the Communications Act, the Commission analogized wide-area SMR service to cellular and, to achieve regulatory parity, established rules that will result in most SMR systems being categorized as commercial mobile radio service ("CMRS") providers.[1] As reflected in the Further Notice, this decision will necessarily subject such SMR licensees to a variety of burdens that are applicable to common carrier licensees by statute, *e.g.*, stricter rules on pre-grant construction and operation, public notice of applications and petitions to deny, limits on alien ownership, etc.

For true regulatory parity to be achieved, however, the benefits of common carrier licensing also should be afforded to 900 MHz SMR service providers. In particular, 900 MHz SMR service providers should be able to expand their systems, on a protected basis, to natural market boundaries, as cellular operators can, and, most recently, private carrier paging[2] service providers can. In addition and related

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[1] 9 FCC Rcd. 1411 (1994), erratum, Mimeo No. 92986, released Mar. 30, 1994.

[2] Report and Order, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd. 8318 (1993) (the "Private Carrier Paging Exclusivity Decision").

to this goal, 900 MHz SMR service licensing procedures should be modified to authorize wide-area systems, which, among other things, will permit construction and operation within broad market area boundaries without the need for individual transmitter licensing.[3]

To these general principles, RMD adds one general *caveat*, clearly appreciated by the Commission in its Further Notice: That is, the application of cellular licensing practices to SMRs (and, where desirable, SMR practices to cellular) must take into account the existing licensing structure and systems already authorized under different licensing regimes. Cellular, 800 MHz SMR, and 900 MHz SMR licensees do not start out on the same footing; in particular, unlike cellular and 800 MHz SMR licensees, 900 MHz systems have not been permitted to construct their systems on a protected basis to serve their natural market areas and, in part as a consequence, 900 MHz SMR service remains a fledgling industry, dwarfed by its cellular and 800 MHz SMR competitors.

900 MHz system expansion must be permitted to occur on a basis reasonably related to the origins of those systems and the evolving competitive environment. Otherwise, rather than regulatory parity, disparities arising from the existing regulatory structure will be magnified, and innovative and competitive 900 MHz SMR systems will not be able to compete with cellular systems and other wide-area licensed mobile services.

Beyond the issue of parity, RMD urges the Commission to take this opportunity to relax the technical and operational restrictions placed upon all mobile radio licensees and encourage the development of regional and nationwide systems, which is justified by the increasingly competitive mobile communications environment.

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[3] At present, cellular licenses are free to use and change their use of individual channels at various sites within their licensed channel blocks and are merely required to notify the Commission of the construction of interior transmitters that do not extend their overall authorized coverage area. In a Further Notice of Proposed Rulemaking, Revision of Part 22 of the Commission's Rules Concerning the Public Mobile Services, FCC 94-102, May 20, 1994 (adopted at the same time as the Further Notice that is subject to these comments), the Commission has proposed further relaxing this requirement to eliminate even the need to notify the Commission of the construction of such interior cell sites. Id. at ¶¶ 7-9. While RMD believes the proposal makes good sense, it further highlights the current disparity in the licensing procedures for cellular and SMR systems.

II. 900 MHz SMR Licensees Must be Released From Regulatory Limbo; System Expansion to Modified MTA Boundaries, as Proposed Prior to the Advent of Auctions and Regulatory Parity, Should be Permitted.

For almost eight years, 900 MHz SMR licensees have been caught in a kind of regulatory no-man's land. System licenses were awarded based upon facilities required to be located within a number of narrowly defined geographic areas, Designated Filing Areas or "DFAs". However, in an effort to govern their operation under existing SMR rules, which provided for licensing systems by individual sites and required 70-mile co-channel separations, the boundaries of the DFAs sliced through natural market boundaries. Like 800 MHz SMRs, actual licensing has been on a transmitter-by-transmitter basis. In sharp contrast to 800 MHz SMRs, however, expansion of 900 MHz SMR systems, both inside and outside of the DFAs, has been permitted only on a secondary, thus far unprotected basis.

At first such secondary licensing seemed a temporary expedient in anticipation of adoption of Phase II of the 900 MHz SMR licensing process, but as the years have passed without further action on Phase II, so-called secondary sites have become a necessity. Wide-area systems, such as RMD, have had no choice but to expand on this basis or lose customers because they cannot provide the wide-area service that customers demand and that their competitors are capable of offering.

The underlying problem for 900 MHz SMR licensees is that the DFAs for which they were licensed were never intended to comprise full market areas. Instead, they were areas drawn on a map essentially for regulatory convenience, so that initial "Phase I" licensing could commence in an orderly fashion, avoiding "daisy-chain," mutual exclusivity problems. Phase II licensing to complete the market areas was supposed to follow shortly thereafter, but did not. Instead, for the better part of a decade, Phase II has been caught up in larger debates about the merits of local, regional, or nationwide licensing, system expansion by incumbent licensees versus new entry, competitive hearings or lotteries, and the like. Just when the SMR industry finally coalesced around a compromise "Modified MTA" proposal submittal by RMD,[4] which would have allowed existing systems to expand to natural market boundaries, without mutual exclusivity, while preserving

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[4] RMD's Comments (April 23, 1993) and Reply Comments (May 10, 1993) filed in the Commission's Phase II proceeding are incorporated into the record of this docket. See Further Notice at ¶ 7.

substantial spectrum for new entrants, the process was put on hold, as almost all attention focused on "regulatory parity" and auction legislation and regulation.

Although the Commission's consideration of Phase II licensing has been delayed, nothing has diminished the need for the Commission to allow existing Phase I licensees to expand their DFA systems to "Modified MTAs," in accordance with the plan submitted by RMD and heavily supported by most SMR industry groups and participants. The public interest considerations associated with insuring that those who made the investment in the initial fragmentary DFA markets will have the ability to protect and expand their systems to natural market boundaries, without being subject to mutually exclusive applications, remain as strong or stronger given their continuing necessary reliance on secondary site licensing in the absence of any Phase II decision.

As more thoroughly explained in other pleadings on file in the Phase II docket, the Modified MTA proposal is similar to the Commission recent decisions to give local broadcasters a first opportunity to implement advanced television service[5] and to allow existing private carrier paging systems to secure channel exclusivity.[6] Significantly, the Private Carrier Paging Exclusivity Decision came after the auction and regulatory parity legislation. The Decision offers a clear example of the Commission's ability to allow existing licensees to expand their systems on frequencies to which they already have been licensed so that they may serve local, regional and national markets. Furthermore, although the mechanism suggested by RMD and supported by the SMR industry differs somewhat from the approach set forth by the Commission in its Second Further Notice, it is consistent with the basic premise of the Commission's proposal that existing Phase II licensees should be given the opportunity to expand their systems without being subject to mutually exclusive applicants from those who have not established a presence in the Phase I DFAs.[7]

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[5] See Second Report and Order and Further Notice of Proposed Rule Making, Advanced Television Systems ("ATV"), 7 FCC Rcd. 3340, 3342 (1992).

[6] See Private Carrier Paging Exclusivity Decision, supra; see also Notice of Proposed Rule Making, PR Docket 93-35, FCC 93-101 ("In our view, it is appropriate to grant exclusivity to licensees who are already operating systems that meet our criteria for exclusivity. This does not constitute a preference at all, but simply reflects the investment that these licensees have already made at 900 MHz when other potential applicants chose not to").

[7] See First Report and Order and Further Notice of Proposed Rule Making, PR Docket 89-553, 8 FCC Rcd. 1469, 1476-77 (1993) ("900 MHz Phase II Further Notice").

As was the case with granting private carrier paging licensees the ability to expand their systems on an exclusive basis, the Modified MTA proposal for 900 MHz SMR is thoroughly consistent with Congressional mandates set forth in the auction and parity legislation. With respect to auctions, both the Budget Act[8] and its legislative history make clear the Congressional mandate that the Commission should seek first "to avoid mutual exclusivity" by the application of "threshold qualifications, service regulations, and other means." 47 U.S.C. § 309(j)(6)(E), which mandate RMD's Modified MTA proposal serves. The Budget Act does not, and was not intended to, alter or supersede the process by which the Commission establishes threshold licensing qualifications and service criteria to avoid mutual exclusivity. To the contrary, the House Report on the bill states that the use of such criteria "should continue to be used when feasible and appropriate."[9]

With respect to parity, RMD's Modified MTA proposal simply would allow 900 MHz SMR licensees an opportunity to expand their systems on a wide-area, natural market basis in a manner that is comparable to that which has already been granted to cellular and other CMRS systems. As discussed above, the failure to permit such expansion would perpetuate the current inequitable disparity between private carrier paging cellular and other systems, who have been granted wide-area market authority, and 900 MHz SMR licensees who have not.

In this regard, the proposed standard set forth in the Further Notice of a 2 kilometer move for distinguishing between major and minor modifications to license (*i.e.*, those subject to auction and those that are not) is not relevant to cellular licensees, who are permitted to construct new transmitters within their authorized service areas. It also should not apply to 900 MHz SMR licensees, for whom the modification of their DFA licenses to Modified MTA areas can and should be authorized as permissible change to their existing authorizations and not as a major amendment, as to which competing applications would be permitted.[10]

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[8] Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").

[9] H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 258-259 (1993).

[10] At very minimum, while not the ideal solution, if Phase I licensees are not granted the right to expand to Modified MTAs without being subject to competing applications, then they should be allowed to convert all of their secondary sites to primary status by minor amendment. As recognized by the Commission in its 900 MHz Phase II Further Notice, 900 MHz SMR "licensees constructing secondary sites have pursued the only avenue available to them in attempting to satisfy perceived demand for wide-area service within and around the DFAs." Id. at 1480.

III. TECHNICAL, OPERATIONAL AND LICENSING RULES AND PROCEDURES SHOULD BE HARMONIZED, WHEREVER PRACTICAL, FOR WIDE-AREA SMR AND CELLULAR SYSTEMS.

A. Wide-area Licensing Should Be The Norm.

Cellular and SMR systems face similar competitive needs to serve wide-area markets. Wide-area licensing gives cellular operators maximum flexibility, among other things, with respect to the construction and operation of individual transmitters and channelization plans within broad market regions. The same underlying technical, operational, and public interest considerations should apply to SMRs. While disparities in the amount of spectrum provided make it difficult for SMRs to be competitive in all areas — in RMD's case, its major competition from cellular arises from ancillary cellular data services, such as CDPD — considerations of parity require that the SMR rules for wide-area service be relaxed to approximate cellular standards.[11]

The very decision by the Commission to classify most SMR services as CMRS does, however, make the adoption of wide-area licensing even more essential. Even under the existing rules, RMD itself has filed over 7000 applications to add or modify transmitter locations, modify, renew, and transfer channel assignments, etc. Since its initial authorization, RMD has filed an average of more than six applications per day. While the filings have been burdensome, RMD has been able to maintain reasonable flexibility in its system construction and operation because of private radio standards that allow pre-grant construction and operation, that do not make such ordinary fill-in type applications subject to public notice and comment periods, petitions to deny, etc.

In the new CMRS realm, absent the adoption of cellular procedures, each and every change that RMD requires would have to be approved in advance by the Commission — a result that would make responsive customer service a practical impossibility. Added to this burden, the ever increasing fees for individual licensing transmitter location by transmitter location, place a hugely disproportionate burden on wide-area SMR applicants, which must be addressed both with respect to filing and regulatory fees. See discussion at pp. 11-12, infra.

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[11] In addition to parity considerations, there is no public interest justification in continuing to require SMR licensees to file thousands of applications for intra-system modifications, when there is no risk of interference to third party licensees.

B. Modified MTAs Offer An Equitable Transition For Moving 900 MHz Licensing From Individual Transmitters to Wide-area Licensing.

For the reasons set forth in greater detail in RMD's initial Phase II Comments and Reply Comments, and supported by many other commenting parties in the Phase II licensing proceeding, RMD urges that its proposed Modified MTAs offer an equitable means for transitioning existing 900 MHz SMR Phase I[12] licensees to licensing on a wide-area basis.[13]

In this regard, the Modified MTAs serve three essential purposes: first, they take into account and are workable in a context of a frequency band in which licenses have already been awarded in the top-50 DFAs; second, Modified MTAs do not require the Commission to prejudge whether systems ultimately should strive for local, regional, or nationwide service; and third, as discussed above and in the aforementioned comments, the Modified MTA approach allows system expansion, without creating mutual exclusivity among existing Phase I licensees seeking such expansion, while at the same time preserving substantial spectrum for new entrants.

C. Co-Channel Interference Protection Standards Should Be Modified To Reflect Wide-area Licensing Considerations.

As the Further Notice states, co-channel protection criteria vary from service to service, depending largely on whether the service uses Commission (or market) defined or station (or transmitter)-defined service areas.[14] Once the Commission implements wide-area licensing for SMRs, the rules relating to co-channel interference for SMR licensees should be amended to prevent interference only at or near service area boundaries, as is now the case in cellular, broadband PCS and narrowband PCS. Thus, RMD supports the approach proposed in the 900 MHz Phase II proceeding, whereby station-defined, co-channel protection criteria would be eliminated and 900 MHz SMR licensees would be required to limit their signal

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[12] Comments of RMD, PR Docket No. 89-553 (April 23, 1993). The Modified MTAs and the manner in which they are derived are set forth in Appendix A to RMD's Phase II comments.

[13] Id. RMD acknowledges that, in light of historical differences in licensing approaches as between 800 and 900 MHz SMR services, 900 MHz SMR lends itself more readily to licensing on a wide-area basis at this time. RMD has no comment on whether a wide-area licensing approach should be pursued with respect to 800 MHz SMR, other than to urge that, to the extent that historic licensing practices are found to impose practical constraints upon the ability to apply wide area licensing principles to 800 MHz SMR systems that these constraints not be applied to 900 MHz systems.

[14] Further Notice at ¶ 39.

strength to 30 dBu at their service area borders.[15] As the Commission observed, such an approach would be consistent with the rules applicable to cellular and PCS licensees[16] and would, therefore, further the purposes of amended Sections 3(n) and 332.

D. Power Limits Should Be Harmonized at 1000 Watts.

Presently, the maximum allowable ERP under Part 90 for base stations is 1000 watts, while the maximum allowable power for base stations under Part 22 is 500 watts. To eliminate this disparity, RMD proposes that Part 22 licensees be permitted to operate their base stations at 1000 watts. Given that current co-channel protection criteria adequately protect against harmful interference at licensees' service area borders, permitting Part 22 licensees to increase their maximum ERP for base stations to 1000 watts is in the public interest.[17] In reference to the appropriate maximum allowable power for mobile units, RMD supports reliance on the 1992 ANSI/IEEE standards for low-power, hand-held mobile units. In the final analysis, the configuration of two-way mobile systems is driven by the need for balance between the power output of mobiles and base stations. To the extent that the power of mobile units is limited by ANSI/IEEE RF exposure standards and other considerations, such as power consumption, output power must necessarily be limited in practice to the amount necessary to operate systems at no greater power than is necessary to achieve high quality service.

E. Interoperability Is Impractical for SMR Systems.

RMD opposes any proposal to require interoperability between a 900 MHz SMR system and any other CMRS system, including another 900 MHz SMR system. This is one instance in which the differences in the amount of spectrum available to cellular and 900 MHz SMR licenses and the development of 900 MHz SMR frequencies for innovative mobile data services and other applications makes applying the cellular rule impractical and contrary to the public interest as an obstacle to innovative technologies.

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15 900 MHz Phase II Notice at ¶ 41.

16 Further Notice at ¶ 41.

17 If, however, there are technical concerns in other bands, the converse of reducing SMR powers to 500 watts should not be required; as important a goal as parity may be, it should not limit the ability of SMR operation to provide service in the most efficient manner that is technically feasible.

Cellular providers have large amounts of spectrum that permit them to designate one portion of their spectrum for interoperable voice services and another portion for auxiliary services and alternative cellular technologies (which are not required to be interoperable). SMR operators do not enjoy this luxury. A SMR service provider required to make its system interoperable with voice services would be effectively precluded from continuing to provide an efficient mobile data service, as there is insufficient spectrum to accommodate both. Furthermore, given that the Commission does not require alternative cellular technologies and auxiliary cellular services to be interoperable, it would be contrary to amended Sections 3(n) and 332 to require 900 MHz SMR systems to be interoperable.

SMR systems also should not be required to be interoperable among other SMR systems. Innovations have developed in SMR in large measure because of the freedom of licensees to choose the best technical means to respond to individual customer requirements. Different systems are comprised of different equipment and different software. The costs required to conform such disparate systems would be prohibitive. Moreover, these systems serve specialized needs and distinct groups of end users that would not benefit from one SMR system being interoperable with another, particularly in light of the greatly increased cost of service that would result from making systems interoperable, assuming that it were at all practical to do so.[18]

F. Construction Periods and Coverage Requirements Should Be Modified To Allow Systems To Grow Out, Over Time, to Market Boundaries.

For wide-area SMR systems, RMD continues to support the 10-year construction period — with construction benchmarks at the second, fifth and tenth years — that RMD proposed in its comments in the Phase II docket.[19]

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[18] Based upon similar concerns, the Commission recently decided not to require interoperability among PCS systems. See Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish Personal Communications Services, FCC 94-144, released June 13, 1994..

[19] Comments of RMD, PR Docket No. 89-553, at 8-9. At year 2, a licensee would be required to construct the first of its multiple sites and cover at least 25% of the population of the MTA (as measured by the licensee's aggregate 40 dBu coverage contours). At year 5, the licensee would be required to cover 50% of the population of the MTA and, at year 10, 75% of the population. Alternatively, a regional or nationwide licensee could show coverage of the relevant percentages of the population of all commonly licensed modified MTAs. Id.

G. Loading Requirements Should Be Eliminated.

RMD supports the Commission's proposal to eliminate loading requirements.[20] As RMD has long maintained, economic necessity is sufficient incentive to ensure efficient use of the spectrum for those who invest in the construction of wide-area systems. Moreover, as the Commission noted, spectrum warehousing can be adequately addressed by other means.[21]

RMD also agrees with the Commission's conclusion that elimination of the 40-mile rule is "consistent with the statutory objectives addressed in this rule making and would enhance the ability of wide-area SMR systems to compete with other broadband services."[22] Additionally, once the Commission adopts wide-area licensing for 900 MHz SMRs, the proximity of stations (*i.e.*, whether they are located within forty miles of each other) is irrelevant for licensing purposes.

H. User Eligibility Restrictions Should Be Eliminated.

RMD agrees with the Commission's conclusion that user eligibility restrictions should be eliminated for all CMRS providers.[23] In addition, RMD urges the Commission to go further and eliminate the restriction as to all SMR systems, regardless of their regulatory classification or, at very least, make clear that the elimination of the eligibility restriction applies to all entities licensed as CMRS providers, regardless of whether particular services they offer may fall within the CMRS category. In this regard, beyond considerations of parity, the underlying basis for any restrictions on service to representatives of foreign government lost its meaning once other previously forbidden user categories — individuals and the federal government, were eliminated.[24]

I. Station Identification Requirements Should Be Eliminated.

Station identification rules permit the Commission and other spectrum users to identify sources of interference. However, once the Commission implements exclusive, wide-area licensing for 900 MHz SMR licensees, it will be easy to identify interference from these licensees through the Commission's licensing records and

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[20] Further Notice at ¶ 70.
[21] Id.
[22] Id. at ¶ 72.
[23] Id. at ¶ 75.
[24] See Report and Order, Amendment of Part 90, Subparts M and S, 3 FCC Rcd. 1838 (1988).

other publicly available information. Accordingly, RMD supports elimination of the station identification rules.

J. Equal Employment Opportunities Should Apply to All.

Notwithstanding the additional reporting and record keeping requirements, RMD strongly believes that the Commission's equal employment opportunity rules should apply to all CMRS providers; and suggests that consideration be given to applying such requirements to all SMR licensees, whether or not they are commercial or noncommercial entities. In this regard, RMD believes that the obligation to offer equal employment opportunity ultimately must arise from being a recipient of federal licensing benefits, and not from the regulatory classification of a particular entity.

K. There Should Be Parity in Application and Regulatory Fees, But Parity Can Only Be Created If the Underlying Application Requirements for Wide-area Systems Are Also Made Equivalent.

The issue of application and regulatory fees is inextricably tied to the Commission's decisions regarding the implementation of wide-area licensing for SMRs. As it stands, while the individual application fees for SMR licensees are ostensibly lower than those applied to cellular systems, because of differences in licensing by transmitter, as opposed to area licensing, the fees imposed upon wide-area SMR systems are, in fact, exponentially higher than those imposed on cellular systems.

RMD, in the past five years, has paid more than four hundred thousand dollars in application fees, including, though the application of multipliers on the number of individual "stations" to which it is licensed, almost one quarter of a million dollars for a single transfer of control application and waiver request. Under comparable circumstances, the fees for a cellular carrier, even one licensed in multiple markets, might not have exceeded more than a few thousand dollars. As fees are increased and a whole new category of regulatory fees is added to the mix, the unfair disparity in fees between cellular and SMR systems under the current rules will get only greater.

Accordingly, the principle of regulatory parity requires that the Commission make SMR and cellular fees equivalent, to include increasing the SMR application fees to the cellular standard. This change, however, must be made together with a

change in wide-area licensing; otherwise increasing application fees for SMR systems would only make present disparities worse.[25]

RMD supports the proposed change in regulatory fees for all SMR licensees, including but not limited to CMRS operators, to a per subscriber basis.[26] RMD notes, however, that such a change will necessitate a change in the application fee for such systems, because, under the new SMR application fee schedule, regulatory fees are imbedded in the application fees for new licenses, renewals and reinstatements.[27]

L. Public Notice and Petition to Deny Procedures and Restrictions on Pre-Grant Construction and Operation May Be An Inevitable Consequence of CMRS Status, But Other SMR Rules Must Be Changed So That These Procedures Do Not Unduly Burden The Operation of Wide-area Systems.

RMD reluctantly agrees with the Commission's conclusions that public notice and petition to deny procedures and, to the extent it may be required by statute,[28] more stringent requirements *vis-a-vis* pre grant construction and operation will, subject to a three-year transition period,[29] need to apply to all CMRS applications. RMD urges, however, that such procedures not be implemented until such time as new rules providing for wide-area licensing for wide-area 900 MHz SMR providers are put into place. Otherwise, for the reasons discussed above, SMR applicants could be put in the impossible position of requiring prior Commission approval, and being subject to notice and comment periods, petitions to deny, competing applications, etc., for even the most minor of system changes.

More generally, RMD urges that, the prospect of such new procedural requirements is strong reason for the Commission to make the definition of minor amendments not subject to such procedures as broad as reasonably possible. It

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[25] As with other issues of wide area licensing, RMD urges that the need for change extends beyond the particular issue of regulatory parity for CMRS providers. It is simply not equitable that applicants in some mobile services must pay exponentially higher fees than applicants in other bands for Commission action that should involve essentially the same amount of administrative work to perform. In this regard, to the extent that the Commission feels the need to grandfather PMRS fees for existing SMR systems, RMD urges the Commission to make clear that an SMR licensee has the right to waive such grandfathered fee protection, the purpose of which is to benefit individual licensees, and to receive a refund of any regulatory fee paid for regulatory fees for future years that are inapplicable to a new regulatory classification.

[26] See Reply Comments of RMD, Gen. Docket 99-19.

[27] See Order, Gen. Docket No. 86-285, released June 8, 1994, at p. 3.

[28] See note 2 supra regarding freedom to construct interior sites without Commission authorization or notice.

[29] See Further Notice at ¶ 183.

would be devastating to licensees, who need to make system changes quickly to respond to changing customer requirements, and to the Commission's already overburdened staff, if, as an unintended result of the parity rules, added incentives are given to those who file petitions to deny, competing applications, etc., to stifle competition or extract consideration.

M. Combined PMRS and CMRS Operation Should Be Permitted.

RMD agrees that mobile service providers should be able to provide CMRS and PMRS services under a single license and that if some of the services to be provided are CMRS, as a practical matter, CMRS licensing procedures will have to apply. Indeed, RMD believes that ultimately the Commission should consider applying CMRS procedures to all SMR applications even if no CMRS service is offered (albeit not all the same standards, *e.g.*, with respect to foreign ownership, would apply) because of the potential administrative nightmare that could occur by subjecting applications for the same frequencies to different licensing mechanisms. Applying common licensing procedures would have the added advantage of eliminating concerns about whether a particular applicant may classify itself as commercial or private to take advantage of one set of licensing procedures over another.

RMD urges, however, that the approach suggested by the Commission of asking applicants to identify different portions of the assigned spectrum that would be used for CMRS and PMRS services is not practical or, in some cases, even possible. Thus, at least with respect to its own services, RMD's basic service offerings are not interconnected with the public switched network and, therefore, would not be deemed to be CMRS. Nevertheless, RMD is developing certain specialized service offerings that, under the broad definition of interconnected services specified by the Commission in its initial parity decision, would fall within the CMRS category. These services, however, are not likely to be offered exclusively on channels that are separate than those used for RMD's non-interconnected service offerings nor would RMD anticipate that others in the SMR service field would divide their service offerings in this manner.

RMD also agrees with the Commission's approach of allowing Part 90 licensees to notify the Commission of a change in CMRS status to reflect, among other things, their current or planned interconnected status. RMD suggests, however, that any window for filing only be applicable to existing or then-planned

status and that future changes in status should be reflected in notification filings as changes in a particular licensees manner of offering service may require. As recognized by the Commission, licensees require the flexibility to alter the method of operation *vis-a-vis* the offering of interconnected service over time. It would, accordingly, be contrary to the public interest to require any licensee to freeze its interconnection plans (and hence its CMRS or PMRS status), without any possibility for future change.

IV. A SPECTRUM CAP IS UNWARRANTED AND, IN ANY EVENT, SHOULD NOT APPLY TO 900 MHZ SMR SERVICES.

RMD strongly opposes the institution of a spectrum cap or, if such a cap is instituted, its application to 900 MHz SMR systems. Such a cap could stifle investment by established communications entities in new and innovative services at the very time that such investment is most needed. The Commission should also give consideration to the other costs and problems that are associated with trying to enforce and apply any rules that seek to discourage market-driven economic investment. For example, there are thorny questions presented about how to treat "management agreements," which are quite common in the SMR industry, as a means of circumventing ownership restrictions.

Beyond the issue of the cost of regulation, there is no evidence whatsoever that such a cap is necessary to maintain competition in the marketplace. To the contrary, the mobile services market already contains a number of competitive services and this number is on the rise as new technologies and innovative uses of older ones develop in SMR and cellular, paging, satellite, and PCS technologies. In the unlikely event that any one licensee ever seeks to aggregate enough spectrum in different services to preclude competition in one or more markets, existing antitrust laws could and would still come into play.

Even if the Commission decides to adopt a spectrum cap, RMD urges it to limit such a cap to broadband spectrum services, and exclude, among other services, services in the 900 MHz SMR band. In this respect, the limited amount of spectrum available at 900 MHz and its narrow 12.5 kHz channels makes it ill-suited for use in direct competition with traditional cellular voice services, which, appears to be the market of most immediate concern to the Commission in proposing a spectrum

cap.[30] Furthermore, while 900 MHz SMR systems are competitive with certain auxiliary cellular services, the primary competitive concerns that bear watching — the ability of cellular carriers to subsidize data services on their own frequencies — would not be addressed at all by the application of spectrum caps to 900 MHz services.

V. CONCLUSION: A COMPLETE OVERHAUL OF SMR RULES CONSISTENT WITH WIDE-AREA LICENSING REQUIREMENTS IS NECESSARY.

If the experience of 900 MHz SMR licensing teaches anything at all it is that satisfactory regulatory solutions are not created by half steps. For 900 MHz SMR services in particular, Phase I licensing remains incomplete without Phase II. More generally, with respect to regulatory parity, it is not practical to impose a partial system of common carrier regulation on SMR licensees without a complete overhaul of the method in which SMR systems are licensed. Competition would be enhanced, and burdens on licensees and the Commission would be lessened by a general migration of existing systems to geographic area licensing paradigms analogous to those of cellular, private carrier paging, PCS, and other services.

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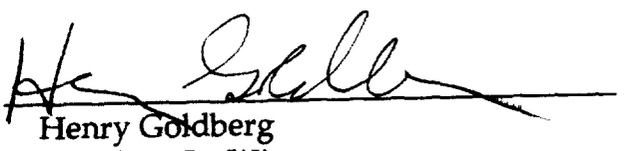
[30] In this regard, the services provided by RMD in the 900 MHz SMR are more analogous to those proposed to be provided by narrowband PCS, for which an exclusion from the spectrum cap has been suggested, see Further Notice at ¶ 96, than broadband PCS, cellular or 800 MHz ESMR systems.

RMD respectfully submits that anything less than a complete overhaul of the SMR rules will result not in parity, but in an essentially incoherent regulatory scheme that is administratively unworkable and that imposes disproportionately more burdensome regulatory requirements on SMR providers *vis-a-vis* cellular and other non-SMR mobile services licensees.

Respectfully submitted,

RAM MOBILE DATA USA
LIMITED PARTNERSHIP

By: 
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June 20, 1994